IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1103 OF 2004

AFL Private Ltd.
(previously known as Airfreight Ltd.) ..Petitioner.
Vs.
S.J. Rajappa ..Respondent.
...
Ms. Shobhana Gopal with Mr. Gopalkrishnan for the Petitioners.
Mr. Suresh Babu with Mr. T.R. Yadav for the Respondent.

WITH
WRIT PETITION NO.3168 OF 2004

S.J. Rajappa ..Petitioner.
Vs.
AFL Pvt. Ltd. ..Respondent.
...
Mr. Suresh Babu with Mr. T.R. Yadav for the Petitioner.
Ms. Shobhana Gopal with Mr. Gopalkrishnan for the Respondent.
....
CORAM: DR. D.Y. CHANDRACHUD, J.
27th September, 2006.

ORAL JUDGMENT :

1. The Industrial Court upheld in revision an order passed by the Labour Court directing reinstatement of the workman together with backwages quantified at 75%. The employer has challenged the order in Writ Petition 1103 of 2004 while the workman is before the Court in Writ Petition 3168 of 2004 in so far as a component of backwages was denied to him. For

convenience of reference, the parties will be referred to as the employer and the workman.

2. The workman in the present case joined the services of the employer as a loader on 9th March, 1987. It was alleged that on 16th October, 1990, the workman together with another workman by the name of Vincent led a mob of loaders at 3.00 in the afternoon to the office of the Area Manager and entered the office when the official was in a meeting with three other officials viz. Phiroz Batliwala, Poonawala and M. Menon. It was alleged that on entering the office, the workman together with the co-worker, Vincent, demanded that the employer should pay a higher quantum of bonus to all the loaders. The Area Manager is stated to have expressed his inability to concede to the demand on the ground that the Head Office of the employer had already taken a decision in the matter. According to the employer, the Area Manager requested the workman and the others who had entered the office to leave and report back at their places of work. Allegedly, the workman and Vincent called upon all the assembled workmen not to leave the office. The allegation was that at the instigation of the workman and the other employee, the workmen

who had assembled there committed acts of misconduct such as hurling of tea-cups, water jugs and a brief case in the direction of the officers, injuring the Area Manager who sustained a bleeding injury above the eyebrow. It is alleged that when one of the officials, Poonawala, tried to contact the police for help on the telephone, the workman rushed to the official and snatched the phone from his hand, uttering certain words, in a threatening manner. In the melee, it was alleged that the workman damaged the telephone equipment. While leaving the office it was alleged that the workmen caused extensive damage to the typewriter and to the stationary items of the secretary and that several cars parked on the ground floor of the establishment were also damaged.

3. On 27th October, 1990 a notice to show cause was issued to the workman calling upon him to explain as to why disciplinary action should not be adopted against him for acts of serious misconduct. The workman denied the charges. On 3rd November, 1990 a charge sheet was issued to the workman and to his co-worker, Vincent, by which they were charged of the following acts of misconduct namely :

"(i) Willful insubordination or disobedience, whether or not in combination with another, of any reasonable and lawful orders of a superior;

(ii) Drunkenness, riotous disorderly or indecent behaviour on the premises of the establishment;

(iii) Commission of any act subversive of discipline or good behaviour on the premises of the establishment;

(iv) Willful damage to work in process or to any property of the establishment;

(v) Instigating other workmen to behave rudely and violently and provoke them to damage the property of the Company:

(vi) Committing an attempt to assault on the Officers, Managers and instigating others or acting in furtherance thereof;

(vii) Entering the work premises unauthorisedly."

4. The workman and his co-worker were suspended from service during the pendency of disciplinary proceedings.

5. The departmental enquiry commenced on 4th December, 1990 and was concluded on 6th March, 1992. The enquiry officer submitted his report on 6th April, 1992. The enquiry officer held that all the charges, save and except for the charge of assault

contained in the sixth head aforesaid had been conclusively established. A copy of the report was forwarded to the workman by the disciplinary authority and he was called upon to submit his explanation thereto and to show cause as to why the punishment of dismissal from service should not be imposed upon him. The workman filed a complaint of unfair labour practices under items 1 (a), (b), (c), (d) and (f) of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. An ad interim order was initially passed by the Labour Court restraining the employer from terminating the services of the workman during the pendency of the complaint. It is common ground that this order was subsequently set aside by this Court in writ proceedings instituted by the employer. On 23rd July, 1992 an order of dismissal was passed against the workman; the workman according to the employer having failed and neglected to file his reply to the notice to show cause until the expiry of the time that was allowed. Thereupon the complaint of unfair labour practices was amended in order to challenge the order of dismissal.

6. By a judgment and order dated 26th June, 2001 the

Labour Court held that the domestic enquiry against the workman was fair and proper. Parties led evidence and advanced arguments before the Labour Court. By a judgment and order dated 18th February, 2003 the Labour Court held that (i) there was no perversity in the findings of the enquiry officer; (ii) the misconduct was not minor or technical in nature; (iii) the employer had not committed any unfair labour practice under items 1(b), (c), (d), (f) and (g) of Schedule IV. However, the Labour Court came to the conclusion that the punishment of dismissal that had been imposed upon the workman was “monstrous and disproportionate” and that accordingly a case of “legal victimization” had been made out. Accordingly it was held that the employer was guilty of an unfair labour practice under item 1(a). The Labour Court directed reinstatement with 75% backwages. Both the employer and the workman challenged the order of the Labour Court in revision; the workman being aggrieved by denial of the component representing 25% of the backwages. The Industrial Court confirmed the order by a judgment dated 22nd January, 2004 which has given rise to the institution of these proceedings.

7. On behalf of the Petitioner, it has been submitted that (i)

Both the Labour Court and the Industrial Court committed an error apparent on the face of the record in interfering with the punishment though both the Courts had held that save and except for the charge of assault, all the other heads of misconduct had been established; (ii) Consequently, once the acts of misconduct were held to have been established and the misconduct was not minor or technical in nature, no case for reinstatement or with 75% backwages was made out; (iii) The Labour Court had held that the misconduct was not of a minor or technical nature and that consequently an unfair labour practice under item 1(g) of Schedule IV was not established. In that view of the matter, the finding that there was legal victimization and an unfair labour practice under item 1(a) was totally contradictory; (iv) An inference of legal victimization can be drawn if the penalty imposed is for a minor misconduct and is shockingly disproportionate. However, in the present case, the Labour Court's finding is that the misconduct was not minor. In the face of the aforesaid finding the ultimate conclusion of the Labour Court suffers from a clear error apparent on the face of the record; (v) The charges of misconduct and misconduct were grave and serious and an allegation that there is victimization has to be established on the basis of cogent evidence

of which there was a total absence in the present case. The workman here and Vincent were leading members of the mob which entered the office of the Area Manager and during the course of the incident damage was caused to the property of the employer and the official was injured. In these circumstances, it was submitted that the order passed by the Labour Court ought to have been interfered with in the exercise of the revisional jurisdiction by the Industrial Court. The Industrial Court having not done so, the exercise of the writ jurisdiction under Article 226, it was urged, was warranted.

8. On the other hand, on behalf of the workman it has been submitted that the past record of the workman was clean and unblemished. Learned counsel relied on the finding that the charge of assault on the workman has not been found to be established. It was urged that no specific act of misconduct has been ascribed to the workman and a perusal of the report of the enquiry officer would reveal that no overt act is attributed to the workman. In these circumstances, counsel appearing for the workman sought to sustain the finding of the Labour Court that there was an unfair labour practice under item 1(a) of Schedule IV.

In support of the Petition filed by the workman, it was urged that there is no reason or justification for denying to the workman 25% of the backwages. Learned counsel also submitted that the findings of the Labour Court in regard to the misconduct having been established are perverse and should be interfered with.

9. The enquiry in the present case has been held to be fair and proper. In these circumstances, consistent with the well settled position in law it was open to the Labour Court and to the Industrial Court and, for that matter, to this Court, to peruse the proceedings in the enquiry. The report of the enquiry officer has been produced on the record. The enquiry officer relied on the evidence of the Area Manager Mr. Patch who deposed that at 3.30 p.m. on 16th October, 1990 the chargesheeted workman together with Vincent had led a group of between 30 a`nd 40 loaders who rushed into his cabin. The workmen are alleged to have started shouting and demanding an explanation in regard to the payment of bonus. The Area Manager stated that he had requested the charge sheeted workman that it would be appropriate if only four or five persons remain in the cabin to discuss the issue. The charge sheeted workman and his co-worker Vincent, however, asked the

other workers to remain in the cabin. The Area Manager deposed that he and the Manager, P. J. Poonawala, tried to explain to the loaders that a decision had been taken by the Head Office and that consequently nothing could be done in the matter at the Airport Office of the employer. A senior executive, Phiroz Batliwala, and the Assistant Manager Mohan Menon were also present in the cabin and tried to explain the situation to the group of workmen. The Area Manager deposed that however the loaders began abusing the officials. The evidence of the Area Manager in regard to the presence of the charge sheeted workman at the scene of the incident was corroborated by Phiroz Batliwala, a Senior Executive, and by Poonawala, who was the Manager. The evidence of the Area Manager was to the effect that the workers became violent and started throwing and flinging articles at the officials. The workers flung tea cups, drinking glasses and a steel water jug. The co-worker Vincent is alleged to have thrown a brief case on the Area Manager as a result whereof he sustained a bleeding injury above his right eyebrow. When the Manager tried to telephone the police, the charge sheeted workman who was standing in close proximity to the officer, snatched the instrument from the hands of the Manager as a result whereof the instrument itself was

disconnected from the junction box and the mouth piece was left in the hand of the Manager. The charge sheeted worker is thereafter alleged to have thrown the telephone instrument on the ground. Eventually, seeing that the situation is going out of control, the charge sheeted workman and Vincent asked the crowed to run away from the cabin. While departing, the workmen are stated to have damaged the stationary rack of the secretary. As many as five vehicles were damaged. The photographs of the damaged vehicles were produced on the record of the enquiry. The enquiry officer considered the entire evidence and came to the conclusion that all the charges of misconduct against the charge sheeted workman were duly established, save and except for the allegation that the charge sheeted workman had committed an act of assault.

10. The Labour Court held that the enquiry was fair and proper. The Labour Court in its judgment dated 18th February, 2003 thereafter adverted to the evidence of the eye witnesses to the incident and held that their evidence had not been shattered on the material aspect of the involvement of both the charge sheeted workman and the co-workman, Vincent. The Court noted that the witnesses had corroborated each other in regard to the

incident. The witnesses who deposed in the enquiry were eye witnesses to the incident. The Labour Court held that a disciplinary enquiry was not governed by the strict rules of a criminal trial and the charge of misconduct was required to be proved on a preponderance of probabilities. The Court held that the enquiry officer was justified in holding that the charges of willful disobedience, of riotous, disorderly and indecent behaviour and of the commission of an act subversive of discipline or good behaviour on the premises of the establishment have been duly proved and that there was no perversity in the findings. Having held thus, the Labour Court inexplicably came to the conclusion that the imposition of a punishment of dismissal was disproportionate. Such a conclusion could not possibly have been drawn on the basis of the proved acts of misconduct which were held to be established in the earlier part of the order of the Labour Court. Even excluding the charge of assault which was held not to be proved by the enquiry officer, the remaining articles of charge were serious in themselves and would be sufficient, if they were established to sustain the imposition of a penalty of dismissal. The charges in the present case of willful disobedience of a lawful order of a superior, of riotous and disorderly behaviour on the premises

of the establishment, the commission of an act subversive of discipline or good behaviour on the premises of the establishment, willful damage to the property of the establishment, instigating other workmen to behave rudely and to provoke them to damage the property of the employer involve serious acts of misconduct.

11. However, in the present case, it has been urged on behalf of the workman that the Labour Court was in error in holding that the articles of charge (save and except for assault) were established. There is no merit in the submission. For one thing, in the exercise of the writ jurisdiction under Article 226 the Court has to consider as to whether a finding of misconduct in a disciplinary enquiry is based on some evidence on the record. In holding that the charges of misconduct were established (save and except the charge of assault), the Labour Court has relied on the evidence of eye witnesses whose testimony it held to be credible and trustworthy. The submission of the workman that no overt act was attributed to him is clearly belied by the report of the enquiry officer. The charge sheeted workman and Vincent had led the mob of workmen into the cabin of the Area Manager and it would appear from the evidence that they had a leading role to play in inciting the

workmen and not accepting the order of the Area Manager to return to their work places. It was in the course of the aforesaid incident that acts of violence and of damage to the property of the employer took place. In so far as the charge sheeted workman is concerned, the incident whereby he prevented the Area Manager from calling up the police by damaging the telephone stands duly established. Therefore, there is material and credible evidence to sustain the charge of misconduct against the Respondent workman. A charge of legal victimization against the employer has to be established on the basis of cogent evidence as in the case before the Supreme Court in **Bharat Forge Co. Ltd. v. Uttam Manohar Nakate**[1]. There was absolutely no factual foundation in the present case for sustaining the charge of legal victimization. In the recent decision in **Hombe Gowda Educational Trust v. State of Karnataka**[2] the Supreme Court has emphasized the need to strike a balance between the interest of the workman and the bona fide concerns of the employer. The Court held that the punishment of dismissal in the face of an act of grave misconduct cannot be regarded to be wholly disproportionate so as to shock conscience

1 2005 I CLR 533.
2 (2006) 1 SCC 430.

of the Court. In **Mahindra and Mahindra Ltd. v. N.B. Narawade**[3] the Supreme Court held that the use of the abusive language against a superior officer could not be termed to be an indiscipline calling for a lesser punishment in the absence of any extenuating circumstances. In the present case, it has been urged on behalf of the Respondent workman that the past record of the workman was otherwise free from blemish. In my view, that itself would not justify an order of reinstatement, where the act of misconduct which stands proved is otherwise serious in nature. The judgment of the Supreme Court in **Colour-Chem Ltd. v. A. L. Alaspurkar**[4] is an authority for the proposition that clause (g) of item 1 of Schedule IV covers a situation where an employer discharges an employee for misconduct which is of a minor or technical character without having regard to the nature of the misconduct or the past service of the employee, so as to amount to a shockingly disproportionate punishment. The Supreme Court held that on a harmonious construction of the clause, with all its sub-parts, it must be held that the legislature had contemplated while enacting the said clause, punishment of discharge or dismissal for misconduct of a minor or technical character which, when seen in the light of the

3 2005 I CLR 803.
4 (1998) 3 SCC 192.

nature of the particular minor or technical misconduct or the past record of the employee, would amount to inflicting of a shockingly disproportionate punishment. The Supreme Court held as follows:

> "Only one reasonable construction is possible on the express language of clause (g), namely, that is seeks to cover only those types of unfair labour practices where minor misconduct or technical misconduct has resulted in dismissal or discharge of delinquent workmen and such punishment in the light of the nature of misconduct or past record of the delinquent is found to be shockingly disproportionate to the charges of minor misconduct or charges of technical misconduct held proved against the delinquent. The one and only subject-matter of clause (g) is the misconduct of minor or technical character."

12. In the present case the express finding of the Labour Court is that the misconduct was not minor or technical and that an unfair labour practice under item 1(g) of Schedule IV was not established. This finding of the Labour Court was justified and correct and does not warrant interference under Article 226 of the Constitution.

13. For all these reasons, I am of the view that the Petition filed by the employer shall have to be allowed and that the Petition filed by the workman will have to be dismissed. The punishment of

dismissal on the proved heads of misconduct cannot be held to be shockingly disproportionate or such as would shock the conscience of the Court.

14. In the circumstances, the order of the Labour Court dated 18th February, 2003 in so far as it awarded reinstatement with 75% of backwages and as confirmed to the aforesaid extent by the Industrial Court on 22nd January, 2004 shall stand quashed and set aside. Writ Petition 1103 of 2004 filed by the employer is accordingly allowed to the aforesaid extent. Writ Petition 3168 of 2004 filed by the worker shall stand dismissed. In the circumstances of the case, there shall be no order as to costs.